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The Solicitors' Journal

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The Solicitors' Journal

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Current Topics.

The New Law Officers.

As was generally assumed would be the case, Sir Thomas Inskip has been appointed to the post of Attorney-General which has just been vacated by the resignation of Sir William Jowitt. The magnanimity and public spirit shown by Sir Thomas in his willingness to accept the lower office of Solicitor-General on the formation of the present Government, after having previously held the higher post of Attorney-General, were generally recognised and applauded, and now that the vacancy has occurred in the Attorney-Generalship, it was in accordance with the fitness of things that he should receive it once again. Although it can scarcely be said that his forensic powers are on the same high level as those of Sir William Jowitt, he is recognised as a sound lawyer, and, further, he has achieved considerable success in the House of Commons, where he has frequently taken part in debate with effect, particularly in the discussion of ecclesiastical questions, in which he takes a deep interest. It will be remembered that in the New Year's Honours list he was fittingly included, being appointed a member of the Privy Council. His successor in the office of Solicitor-General is Sir Frank Merriman—an appointment which, again, was generally anticipated. Sir Frank held the same post in 1928-29, and discharged its duties very effectively. He has been a member of the House of Commons since 1924, and just as, during his previous tenure of the office he proved to be a valuable recruit to the debating strength of the front bench, so, we venture to predict, he will prove to be so again now that he becomes a member of the Government.

Sir William Jowitt.

To most members of the profession the announcement in Monday's journals that Sir William Jowitt had resigned the office of Attorney-General, which he has held with such distinction since 1929, must have come as a great surprise and with a feeling of regret. This step, it is assumed, has been taken in consequence of the difficulty he has experienced in finding a constituency that will favour his political wooing, and return him to the House of Commons, where, as the Prime Minister stated some time ago, his presence was urgently wanted. Naturally, the head of the Cabinet expects the law officers, and particularly the Attorney-General, to be in the House and available for instant consultation on important legal questions which have a knack of emerging unexpectedly, and is consequently disappointed if they fail to obtain election. Readers of the biography of Lord Halsbury may recall that when that eminent lawyer was Solicitor-General and had been unsuccessful in various attempts to win a seat, he was informed in no uncertain terms that he would have to choose between resignation or the acceptance of a puisne judgeship unless he could succeed in persuading a constituency to elect him. Happily in his case a constituency was shortly afterwards found for him, he took his seat, and in due time reached the highest office in the law open to him, that of the Chancellorship. Sir William Jowitt has, so far, not been equally fortunate in that way, but if a long-continued success in the House of Commons has not been vouchsafed to him, he at least has the satisfaction of realising that he has secured a leading place at the Bar. As a junior he was always busy, and in the best class of litigation, and at the early age of thirty-six he took silk and at once made his mark and his personality felt in the front row, for he is possessed of all the qualities which make for forensic success—a fine presence, a pleasing voice, a persuasive style, and a rapid intuition into the heart of any case he may be instructed to argue. As an advocate he is unsurpassed, and it may confidently be anticipated that one of the higher offices in the law will one day be his.

"Reasonable Care" and the Motor Car.

"Reasonable care" is about as comprehensive a phrase as has ever been invented, and is applicable to the duties of a carpenter as much as to those of a highly skilled surgeon. On 13th January, 1932, in *Lewis* v. *Dart* (*The Times*, 14th January, 1932), Mr. Justice Rowlatt laid down what was reasonable care in the case of garage proprietors who have custody of motor cars. "Reasonable care in the case of a motor car," his lordship said, "is very considerable care, for as everyone knows, cars are very easily stolen." The plaintiff had garaged his car at the defendant's garage for 18s. 6d. a week. One night a mechanic who had recently been employed by the defendant entered the garage by the side door, using a key which had been given him by the defendant, and opening the shutter doors, stole the plaintiff's car. The man was subsequently convicted and sentenced for that and other crimes. The defendant pleaded that receipts were issued from time to time to the plaintiff containing provisions exempting the defendant from responsibility for loss by theft and that a notice to a similar effect was prominently displayed at the garage. His lordship found that no receipts were handed to the plaintiff and that such notices as may have been displayed were not in such clear terms as to be properly appreciated by the plaintiff and to protect the defendant. His lordship also found that the defendant had not made sufficient inquiry about the character of the mechanic with whom he had entrusted the key of a Yale lock, so that the contents of the garage were open to him when no one else was there. The employee was not entrusted with the custody of the contents of the garage, and it was careless of the defendant to allow him to retain a key. Even if the mechanic had the custody of the contents of the garage his lordship held that it would have been carelessness on the defendant's part to trust the mechanic with a key. Judgment was

therefore entered for the plaintiff. Opinions as to what is "reasonable care" in a particular case differ so widely that it is wisely provided by the law that the question is one of fact for a jury—*Doorman* v. *Jenkins* (1834), 2 A. & E. 256—so that the average opinion of twelve "reasonable men" can be sought on the point. A well-known canon which has been said to apply to all cases is that an agent must use such care as he would ordinarily use in his own affairs: *Beal* v. *South Devon Railway Company* (1864), 3 H. & C. 342. Hallowed though this be by judicial dicta, it cannot be said that the average man's ordinary care in his own affairs usually furnishes a perfect ideal of care in the conduct of the affairs of other people. In these days of stress it is only too often a case of "Doctor cure thyself."

Dean of Faculty.

LAST WEEK the members of the Scots Bar elected a new Dean of Faculty which is the highest honour they can bestow upon one of their number. Corresponding in large measure to the Batonnier of the French Bar, he has no exact counterpart in England, for here the Attorney-General is the head of the Bar and as such presides at its annual meeting, but he does not hold the same position relatively to his fellow members as does the Dean of Faculty, who is the real head of the Scots Bar, and, as such, consulted upon any doubtful point of professional practice or conduct, in this respect his functions corresponding to some extent to those exercised by the Benchers of the Inns of Court and the Bar Council. The office is held nominally for one year, in this again resembling the position of the French Batonnier, but like him he is customarily re-elected. The one notable instance where the Dean was turned out of office was in 1796, when HENRY ERSKINE, the brightest ornament of the Scots Bar, was refused re-election on political grounds. The incident made a profound impression at the time, the story of how it was brought about being narrated in some detail by COCKBURN in the "Memorials of His Time." We are there told that only one of ERSKINE'S personal and political associates deserted his principles and opposed him. When this gentleman's name was called and he gave his vote against ERSKINE, the clock happened to strike three, whereupon JOHN CLERK said with great intensity, "When the cock crew thrice, PETER denied his Master." ERSKINE felt deeply his expulsion from the deanship, but only on one occasion in public did he make any reference to the incident with a tinge of asperity about it. At a Whig dinner the chairman having proposed "the health of the gentlemen of the Faculty who had done themselves the honour of voting for Mr. ERSKINE'S re-nomination to the Deanship," ERSKINE rose and quietly remarked, "Mr. President, would it not be sufficient to propose the health of *the gentlemen* of the Faculty?" At one time it was not uncommon for the office to be conjoined with that of Lord Advocate, but this duplication has been frequently deprecated. Lord YOUNG spoke of the deanship as one that ought to be regarded as a "lonely splendour," and so it usually is.

His Precedence and Privileges.

AS HAS been said, the Dean of Faculty presides at all meetings of the Scots Bar, but in court, the Lord Advocate, the Scottish law officer corresponding to the Attorney-General, takes precedence. The Dean, however, takes precedence of the Solicitor-General. The Dean sits in the centre of the bar, while the two law officers sit, one on the right hand, and the other on the left, within the bar at the clerk's table. Even before the Scots Bar successfully agitated for the rank of King's Counsel being established among them, it had been the practice for a good many years for the Dean of Faculty, like the law officers, to be made the recipient of a silk gown. By his election at the hands of his fellow members and the precedence accorded him in court it will be gathered that he is invariably a man of acknowledged eminence in the profession, and most of the holders of the office have deservedly been raised to the Bench. But it should be noted that while possessed of high privileges, the Dean has obligations as well which he is expected to, and which he always does, carry out with a magnanimity worthy of all praise. Thus, if he is requested by any of the counsel annually appointed to undertake the conduct of poor cases, to appear with them in court, he is expected to comply if at all practicable, and that assistance is given gratuitously. So, too, he is expected to place his services, if called for, at the disposal of a prisoner indicted for murder who is unable to brief leading counsel in the ordinary way. And yet we hear every little while of the mercenariness of members of the legal profession!

Russian Banks and English Courts.

THE DIFFICULTIES which have arisen in the case of foreign companies with branches carrying on business in England, having British shareholders, by the legislation of the Soviet Government, received a further illustration in *Russian and English Bank* v. *Baring Brothers & Co. Ltd.* (75 SOL. J. 68), in which EVE, J., delivered a reserved judgment staying the action on the ground that the plaintiffs having been dissolved in Russia had no existence and could not maintain an action in England. The plaintiff bank was incorporated by Russian law in 1911, and during the war credits were appropriated in its favour by the then Russian Government. As the result of a complicated series of financial transactions the plaintiffs, or rather their London branch, claimed that Messrs. Baring Bros. & Co. Limited held £180,000 belonging to them, and in 1921, after the Bolshevist revolution had supervened, commenced an action to recover the money. Nothing more was done until 1929, when pleadings were delivered. In 1931 the defendants took out a procedure summons asking that the action be stayed, on the ground that the plaintiffs had been dissolved by a Soviet decree nationalising all private banks. In *Russian Commercial Bank* v. *Comptoir d'Escompte de Mulhouse* [1925] A.C. 125, the House of Lords held, reversing the decision of the Court of Appeal, that the action was maintainable, as the defendants had not proved that the plaintiff bank had been dissolved or that the property in the bonds in that action was no longer in the bank. In the present case, however, this point could not be raised, for it was admitted that the plaintiffs had long ceased to exist in Russia. Counsel for the London branch, however, relied on a statement in the speech of Lord FINLAY, in the *Mulhouse Case* [1925] A.C., at p. 141, in which he said that even if it had been shown that the Russian bank had ceased to exist in Russia, he would not treat that as decisive, and that in all fairness the London branch must have the right to use the name of the bank for the purpose of getting in its assets. What may be perfectly fair and equitable, however, is not necessarily strict law, and EVE, J., said he could find no support for that dictum in the speeches of any other member of the House. What ATKIN, L.J. (as he then was), in *Gaukassow's Case* [1923] 2 K.B., at p. 692, called the "fantastic and deplorable" effects of Soviet decrees, could not, therefore, be met in the manner which Lord FINLAY indicated. The judgment, however, contained a valuable suggestion which may resolve these difficulties at any rate to some extent. Under s. 338, sub-s. (2), of the Companies Act, 1929, a foreign company which has carried on business in Great Britain, but ceases to do so, may be wound up as an unregistered company, notwithstanding that it has ceased to exist or been dissolved by the laws of its own country. Lord WRENBURY made a similar suggestion as to the effect of what was then s. 268 of the Companies Act, 1908, in his speech in the *Mulhouse Case* (p. 147), and it remains for the advisers of the British shareholders in the Russian and English Bank, who hold most of the shares, to act upon it. A liquidator when appointed might have power to get in British assets and distribute them among British creditors and shareholders.

Lessee to Landlord's Ejectment Pleading Possession.

ORDER 21, RULE 21.

THE case of *Barton* v. *Reed*, before LUXMOORE, J., on 27th October, 1931, shows the danger of a lessee pleading to his landlord's ejectment action for breach of covenant that the lessee is in possession by himself or his tenants (Ord. 21, r. 21). A plea that to the writer's astonishment he was told has been of late several times put in in the King's Bench Division. The plaintiffs were the present Estates Governors of Dulwich College; the statement of claim set out the lease of the house granted by deed of past governors, the assignment thereof to the first defendant, that the reversion was vested in the plaintiffs, an underlease granted by the original lessee, the assignment thereof to the second defendant, then alleged the breaches, and prayed possession.

The first defendant pleaded simply possession by herself or her tenants, the second pleaded similarly; the other defendants, sub-tenants under the second defendant of various parts of the house, pleaded various defences.

On the case being opened before LUXMOORE, J., the plaintiffs' counsel stated that he should prove the lease, the assignment to the first defendant, and the devolution of the reversion to the plaintiffs, and then ask for judgment for possession, under the ancient rule that when a lessee formally denies in face of the court that he ever has held under the grantor, and claims fee in himself (which was the effect of the plea on record) and that is found against him, the reversioner can in that very action demand judgment for possession, on the forfeiture. The judge thereupon observed that if that were so then there is no place for amendment or relief.

Doubtless his lordship meant that L.P.A., s. 146, has no application, that at law there is no relief, and none in this case in equity (*Barrow* v. *Isaacs* [1891] 1 Q.B. 417; *Peachey* v. *Duke of Somerset*, 1 Strange 447).

The plaintiffs' counsel then pointed out that the plaintiffs had over 3,000 tenants of houses, and could not pass such a plea, which, if allowed, would permit any legal defence to be sprung in surprise on the plaintiffs; but that as this was the first occasion on which such a plea had been put in against them, they would be willing on terms to waive the forfeiture, and allow the defendants to put in a proper legal defence.

After discussion between counsel (the counsel appearing for the first defendant had not signed her pleading) terms were agreed and approved by the court, and the case stood over for legal defence to be put in. This took the form of striking out the plea of possession, and a denial of any breach.

Technically, by the agreed terms the plaintiffs waived the forfeiture, "if any," and the point in question was not argued; but the observations of the judge, both then and afterwards on the adjourned hearing, when he decided for the plaintiffs on the merits, left no doubt as to his opinion that the pleading had given occasion for forfeiture.

We now collect the ancient and sparse authorities on the very ancient rule that, if the tenant in any action by the reversioner grounded on the lease in writing, either denies of record, or formally in face of the court, that he ever held under the lease, and that fact be found against him, the reversioner can recover judgment for possession for the forfeiture and in that action. The tenant's denial imports a claim of the fee in himself.

In our early law if A had granted an estate to B for life, and afterwards conveyed the reversion to X, the grant was not perfect till B had attorned to X.

We cannot now go into the question whether attornment could be practically compelled in any other way; but unquestionably it could be practically compelled if the grant of the reversion was by fine levied in the King's Court of C.P. X, having taken the grant by fine, would sue a writ of "*Quid Juris Clamat*," requiring the sheriff to produce B before the court, for the court to take cognisance what of right ("*Quid Juris Clamat*"), B claims in the messuage, etc., which A in our court has granted to X by fine between them made, etc. If B, when produced, refused to plead, he would be committed for contempt till he did plead; if he claimed to hold under A then the court ordered him to attorn to X, but "if he claims to have fee simple in the tenements and it be found that he had not fee simple, he shall lose the seisin of his land": *La Vieux Natura Brevium*, 169—a tract supposed to have been written *tempore* Edw. III.

This text implies but does not *totidem verbis* state, that this judgment would be given in that very action. Let us then clinch the matter. In 25 Edw. III, A.D. 1352, a case occurred, which, though not in the "Year Book," is given in exactly the same words, as under, in Fitz H. Abr.: Quid Juris Clamat, pl. 43, and Statham Abr.: Quid Juris Clamat, pl. 10.

"In *Quid Juris Clamat* the defendant claimed fee, and it was found against him, and the demandant had *judgment* to recover seisin of the land, etc."

This position interests BROOKE, for citing a case, 36 Hen. VI, he says: "*Quid Juris Clamat* against tenant for term of life, he claims fee, which is found against him, this is a forfeiture of his estate, and the demandant can enter, and yet no land was in demand by this action but only attornment. And the same law on disclaimer in *præcipe quod reddat*, the demandant can enter": Brooke Abr.: Forfeiture de Terre, pl. 92.

The same principle is applied in *Barkhouse Case* (30 El.), 4 Leonard 4, "Debt against lessee for years for rent, the defendant claimed fee in the land, whereas he had no fee; it was resolved that it was a forfeiture."

The same law, if a tenant for years sues his landlord in ejectment, claiming fee, which is found against him: *Doe d. Jeffreys* v. *Whittick*, Gow 195, cf. *Vivian* v. *Moat*, 16 Ch.D. 730.

See also "Cole Ejectment," p. 439; Co. Litt. 251 (*b*); Bacon's Abr. Leases T. 2, p. 884, a title supposed to have been written by GILBERT, C.B.

But what if the tenant, admitting in his defence that he once held under the lease, specially pleads a subsequent purchase by him of the reversion from *the grantor* of the lease, and fails in that plea?

In *Dicksey and Spencer's Case*, 29 El., as reported 3 Leonard 169, which was an action of debt for the rent, and the tenant for years pleaded as above, and the landlord traversed the alleged bargain sale by him of the reversion to the tenant, with obvious success, it was argued that as the plaintiff had traversed the bargain and sale (not merely joined issue the only reply open to the defence under Ord. 21, r. 21), there was no forfeiture; but three judges were clear that, notwithstanding the traverse, this was a forfeiture. But, as reported in "Godbolt," p. 105, pl. 124, WALMESLY and FENNER, admitting that had he claimed fee generally, that might be a forfeiture, yet considered that the special plea, though found against him, did not occasion forfeiture.

Their view would undoubtedly prevail at this day (see *Rees and Powell* v. *King*, Forrest 19), and would, I think, always have prevailed.

The distinction surely is clear; in the first case, the tenant denies that he ever held under the lease; in the second, he admits that he did once so hold, but says that by matter subsequent between *the grantor* of his lease and himself, that the lease has come to an end; this plea failing, his admission that he once held, and consequently must still hold under the lease, stands: there is no estoppel; he has never denied his landlord's title *quoad* reversioner; quite the contrary, he has set it up by his very plea.

The distinction noted above is old. Where tenant admitted the lease, but said it was at 40s., not £40 rent, as alleged, PERSEY said if that be found against him he shall lose seisin of the land, which FINCHEDEN, J., denied, and said that no other

penalty shall ensue, but that he shall attorn: Brooke Abr.: Quid Juris Clamat 7.

Basic principles of law, though usually called technicalities by counsel in a difficulty, are eternal.

It is worthy of note that in the case which gave rise to this article a week's notice was given that the point would be raised, so that the defence was not surprised.

Majority Verdicts.

THE majority verdict of conviction, returned by a jury in Glasgow, on 9th January last, in a case of alleged murder, in which the medical evidence was singularly conflicting, has once more brought into the limelight a distinctive feature of Scots legal procedure that, with its twin brother—the verdict of "Not proven"—never fails to attract public attention south of the Tweed. With verdicts of "Not proven" we are not, for the moment, concerned. But a good deal of comparative legal history lives behind the majority verdict.

In Scotland, trial by jury was well established in the course of the fourteenth century (Dunedin: "Encyclopædia of Laws of Scotland," sub. tit. "Jury Trial," Vol. 8, p. 520), and was used both in civil and in criminal cases. In the former, the jury consisted, as it does, in fact, at the present day, of twelve members, and, in the latter of fifteen, although at one time a greater or less number was permissible, provided always that it was unequal. The jury system in Scotland gradually fell into desuetude in civil cases, but it was restored provisionally, for five years, in 1815 (55 Geo. III, c. 42), and, in 1819 (59 Geo. III, c. 35), the restoration was made permanent. The powers of juries were extended by the Judicature Act, 1825 (8 Geo. IV, c. 120). During the whole period covered by this legislation, however, the jury was regarded, not as an independent jurisdiction, but "as a commission for the ascertainment of facts deemed to be pertinent" (Dunedin, *ubi sup.*), and jury cases were tried before a special tribunal, known as the Jury Court. In 1830 (2 Geo. IV and 1 Will. IV, c. 69) the jurisdiction of the Jury Court was transferred to the Court of Session. In civil trials by jury in Scotland, where the jury is not unanimous, no verdict, save by consent of parties, can be accepted till the expiry of three hours from the retirement of the jury to consider its verdict; if the votes are equally divided, and no agreement is reached within ten hours after such retirement, the jury may be discharged (Dunedin, *ubi sup.*, at p. 547). In criminal trials a bare majority is, in all cases, sufficient for a verdict.

England, as usual, pursued her own course of development (see Pollock and Maitland: "History of English Law," I, pp. 138-149; Holdsworth, I, 312; Maitland: "Collected Papers," II, 448, 488). The system of trial by jury in civil cases, which is of royal and not popular origin, was first suggested by, if not derived from, the Frankish *inquisitio*, held on behalf of the King into rights claimed by him, and extended, later on, to claims by the subject, but sprang directly from the administration of Henry II. Its beginnings are to be found in the "inquests of office" on a variety of subjects, conducted by a public officer before a body of "recognitors," summoned by him and quite distinct from the "compurgators," from whom the modern "witnesses" are ultimately descended. Like the *inquisitio* of the Frankish Kings, the "inquest of office" was gradually made available to the subject, as well as to the Crown. By 1164 the *Assisa utrum*—an inquest as to whether a land was "alms or lay-fee" had become a regular part of the machinery of justice. The possessory remedies of the assizes of "novel disseisin" (1166), "mort d'ancestor" (1176), and "darrein presentment" in relation to advowsons were established. The "Grand Assize" protected rights of ownership in "free tenements," rights which were further consecrated by the famous *nullus liber homo* clause in Magna Carta (1217, c. 35).

There are traces of the jury of accusation in Danish, Scandinavian and Icelandic institutions, but it probably sprang from the same sources as the jury in civil cases, and William I brought the conception with him from Normandy. Henry II insisted on the use of the "jury of neighbours" in Normandy in 1159, and it was introduced into England through the ecclesiastical courts in 1164. From 1166, it was employed as a preliminary method of inquiry in cases of murder, robbery, larceny and harbouring criminals, categories to which, in 1176, the Assize of Northampton added forgery and arson. From these beginnings were gradually developed the systematic inquiries of the jury of accusation before the justices in eyre. The jury of accusation was originally a jury of presentment only. The question of the guilt or innocence of the persons "presented" was left to be determined by one of the other recognised methods of legal proof—ordeal, trial by battle, or compurgation. But the ordeal was abolished by the Lateran Council in 1215. Proof by combat survived till 1819 (59 Geo. III, c. 42). Compurgation became of negligible importance (Holdsworth, I, 306), and was abolished in 1833 (3 & 4 Will. IV, c. 42, s. 13).

In the meantime, a rival institution had made good its place in the English juridical system. The jury of trial—or "petty jury"—had gradually separated itself from the jury of presentment, or "grand jury." At first, the right of an "appealed" (accused) person to go before a petty jury was a matter of payment, but the venal element disappeared in time from its concession, and the right of the appellee "to put himself on his country" was fully established.

It was only by degrees that the modern rule of English law requiring unanimity in the verdicts of juries, both in civil cases, except by consent, and in criminal cases peremptorily, was affirmed. In the assize of novel disseisin, in which no question of title was involved, a verdict by seven to five had been accepted, and BRACTON declares that in criminal cases, if the majority of the jury did, and the minority did not, know the facts, judgment should be given in accordance with the view of the majority (Pollock and Maitland, II, 623, 626 n 3). The dangers that beset the path of the administrators of the law have been thus admirably summarised (Pollock and Maitland, *ubi sup.* at p. 625):

> "A little inquisitive zeal on the part of the King's Commissioners might turn the institution into a mere examination of witnesses, whose divergent testimonies would be weighed by the Court. Or again, their voices might be counted without being weighed and the verdict of the majority accepted."

The solution of the problem was found in the theory that the jury was "the country," i.e., the countryside. The country, it was thought, could have but one voice. So, from the fourteenth century onwards, the desire for unanimity asserted itself, and the jury came to be treated as an entity, one and indivisible.

The rule of unanimity has been broken into, to a great extent, in the British possessions. In some, trial by jury in civil cases does not exist, e.g. in the Union of South Africa, where it was abolished by Act 11 of 1927; and cp. South Australia, where it was restricted by Act 1805 of 1927 to the determination, on the order of a judge, of issues, arising in civil cases as to whether a party was guilty of an indictable offence. But practically, wherever the trial of civil actions by a jury has been introduced and survives, a majority verdict may be accepted, usually after the expiry of a prescribed period of deliberation, thus, in Alberta, five out of a jury of six (c. 14 of 1925); in Bermuda, a majority of three-fourths (Ord. 33 of 1927); in East Africa, two-thirds in certain circumstances (Ord. 35 of 1911).

In criminal cases, four distinct lines of policy have manifested themselves:—

(1) In a few instances, the English general rule of unanimity is adhered to, e.g., Alberta (c. 14 of 1925); East Africa (Ord. 17 of 1908):

(II) A more frequent tendency is to preserve the rule of unanimity in capital cases, and to make a specified majority verdict, here again, frequently after a stated period for deliberation, acceptable; thus Bermuda (Ord. 33 of 1927); Bahamas, majority of two-thirds in non-capital cases (Ord. 7 of 1908); Gibraltar, five out of a jury of seven, after two hours' deliberation (Ord. 1 of 1908); South Australia, ten out of twelve (Act 1805 of 1927);

(III) A third line of action is to make the prescribed majority acceptable, if the trial judge associates himself with it (Indian Code of Criminal Procedure (Act V of 1898, s. 305 (1))).

(IV) Finally, we have the possessions in which the prescribed majority is acceptable as it stands; thus Jersey, sixteen out of twenty-four to a verdict of guilty (Law of 25th February 1913, confirmed by Order in Council of 11th April, 1913); the Union of South Africa, seven out of nine against the accused (Act 31 of 1917); Mauritius, seven out of nine (Ord. 10 of 1850, s. 21); Ceylon, five out of seven (Criminal Procedure Code, Ord. 15 of 1898, s. 223).

In most continental systems in which trial by jury exists, the verdict of a majority suffices (see, e.g., the French and Belgian Codes d'Instruction Criminelle, art. 347); and, for further illustrations, Von Moschziskler, "Trial by Jury," s. 408.

In the United States, the parties may generally, in civil cases, accept a three-quarters' majority verdict (Jour. Comp. Leg. (N.S.) Vol. 6, p. 181, e.g., in Missouri nine out of twelve). The law of Pennsylvania requires a unanimous verdict, unless waived by the parties, in civil cases; in charges of misdemeanour, but not of felony, the accused may agree to the verdict of a jury (Moschziskler, *ubi. sup.*, ss. 405, 406).

Company Law and Practice.

CXIV.

COSTS OF WINDING UP PETITION.

THE volume of Chancery Reports for January, 1932, is packed with matter of interest to the company lawyer, but there is one topic in particular touched upon which makes a particularly strong appeal to all of us, though some, perhaps, may be a little diffident about admitting that such is the case: that topic is costs. Certainly there is no subject which more nearly concerns the practising lawyer, be he barrister or solicitor, though the former is, perhaps, in a more fortunate position than the latter with regard to his costs.

It is such a common occurrence to hear of a petition for winding up ending by the court making the usual order for compulsory winding up that there are probably many people whose ideas of what such usual order contains are of a rudimentary character; in fact, the Appendix to the Companies (Winding Up) Rules, 1929, contains, in Form 16, a form of order, which is quite short and simple; and which, in substance, only orders the winding up, constitutes the official receiver provisional liquidator, and makes an order for taxation of costs, and their payment out of the assets of the company. Not unnaturally, however, the form is silent as to whose costs it is are to be taxed and paid out of the assets. The Act is silent on the point, and we must turn elsewhere to find out what happens about the costs. In *Re Humber Ironworks Co.*, L.R. 2 Eq. 15, Lord ROMILLY lays down certain rules with regard to costs of winding up petitions; "Buckley" (11th ed.), at p. 376, dismisses this case, with others, as now having an interest little more than historical. Be this as it may, Lord ROMILLY does at least make a clear statement of the lines on which he acted; while the statement as to the practice contained on p. 376 of "Buckley" is not as clear as it might be. "The practice is," say the learned editors, "to give costs to the petitioner if the petition succeeds, and to the company if it fails, and further, to give one set of costs to the contributories, and one to the creditors who support the winning side. If the petition succeeds, these costs are given out of the company's estate; if it fails, they are given against the petitioner."

It would seem to be a not unreasonable inference to draw from that passage that, if the petition succeeds, no costs are given to the company. What does Lord ROMILLY say about that? "where the court grants the prayer of the Petition," says his lordship, "of course, it will give no costs to persons who appear to oppose the petition; because in that case the court makes an order against them; it gives the costs of the petitioner and those of the company out of the estate," and then he goes on to deal with those supporting the petition, and says that they should have only one set of costs between them, whether shareholders or creditors; this latter rule being now modified in favour of the shareholders and creditors, as appears from the passage from "Buckley," cited above. The giving of costs to the company, where it appears to oppose an order for compulsory winding up, seems illogical, in that in such a case the court makes an order against the company, but such is the practice, notwithstanding the observation which I have quoted from "Buckley." If it were otherwise, one would imagine that the number of opposed petitions would be fewer than it is, and it cannot be to the good, at any rate, in quite an appreciable number of cases, that such contentions as there may be to be made against a winding up order, should never see the light of day.

In the case of *Re C. B. & M. (Tailors) Limited* [1932] 1 Ch. 17, a petition for winding up had been presented by a contributory, and the usual compulsory order was made, after the petition had been opposed by the company. This order provided that the costs of the company should be taxed and paid out of the assets; these costs were taxed as between party and party on the basis that the company was insolvent and were allowed at £183 3s. 10d. The solicitor for the company presented a bill of costs incurred subsequent to the presentation of the petition for a total of £433 8s. 6d.; this bill included the costs which had been taxed at £183 3s. 10d., and the solicitor then claimed to prove, as a creditor of the company, for the balance, namely, £250 4s. 8d., subject, of course, to taxation, if the liquidator so desired. The liquidator rejected the proof, and Mr. Registrar STIEBEL upheld his right to make such rejection, but EVE, J., directed that the liquidator should admit the proof.

It is interesting to observe that the two parties who were in favour of rejection had separate reasons for the rejection. The liquidator said that, as the balance had been disallowed on taxation, it could not be claimed by proof in the winding up; but EVE, J., held that taxation under the winding up order fixed the sum to be allowed as between party and party, but did not deprive the solicitor of his right to recover payment of such further sums as, after solicitor and client taxation, were found due to him. As an illustration, the learned judge gives the case of a lay client who instructs his solicitor to brief a particular counsel and agrees the fees to be paid to him. If the fees were reduced on a party and party taxation, the client would not thereby be relieved from making the agreed payments.

The other reason for rejection, and that on which the learned registrar founded his decision, was that r. 192 of the Winding Up Rules precluded the payment of any costs beyond the taxed costs of the petition; that rule is much too long to be here set out, but it does not expressly state, and EVE, J., refused to hold that it implied, that a proof might not be lodged for payment (after the costs to which the rule gives priority) of any further costs of the company beyond those to which the rule gives priority.

(To be continued.)

A Conveyancer's Diary.

Breaking Settlements.

I suppose that most of us at one time or another, and some many times, have been called on to advise with regard to what is generally known as "breaking a settlement," and had to consider how that could best be done (if it could be done at all) so as to protect the trustees from all liability, and especially from any future claims for death duties.

Take the quite ordinary case where under a settlement of personalty the trustees hold upon trust to pay the income to A for life and after his death for B.

In the lifetime of A it is desired to put an end to ("break") the settlement, and both A and B, being *sui juris*, are willing to join in any arrangement which they are advised will be effectual to accomplish that purpose.

There are three ways in which it may be done, and there are, of course, objections to, or at least difficulties in the way of, each of them.

The first method is by means of an assignment or release by A (the tenant for life) to B, either voluntarily or for valuable consideration.

The trouble which arises here is the liability for estate duty which may become payable upon the death of A. The succession duty can be commuted but the estate duty can not, and, when B calls upon the trustees to hand over the funds, the question arises whether they ought to retain any sum in order to meet the estate duty. If they ought to do so, it will not be easy to decide how much they should provide, as of course they cannot tell what the rate of duty will be when A dies, or what, if any, aggregation there will be which will affect the rate of duty.

Before the Finance Act, 1900, estate duty was not payable where the interest of the tenant for life was released in favour of the remainderman.

Thus, in *A.-G.* v. *Beech* [1899] A.C. 53, a tenant for life of settled property with a power of appointment, appointed the property to her son subject to her own life interest, and subsequently surrendered her life interest to the trustees of the settlement "to the end and intent that such life interest may merge in the interest in remainder of" her son. The tenant for life died more than twelve months afterwards. It was held in the House of Lords, confirming the Court of Appeal, that the property did not pass on the death of the tenant for life, and that estate duty was not payable under the Finance Act, 1894. Nor did it make any difference where the tenant for life died within twelve months after the release of the life interest: *A.-G.* v. *de Préville* [1900] 1 Q.B. 223.

In that state of the law, it was no doubt a simple matter in many cases to evade the estate duty payable on the death of a tenant for life. This was met by s. 11 of the Finance Act, 1900, which provided that property real or personal in which a deceased person or any other person had an estate or interest limited to cease on the death of the deceased should be deemed to pass on the death of the deceased, notwithstanding that such estate or interest had been surrendered, assured, divested or otherwise disposed of, whether for value or not to or for the benefit of the remainderman or reversioner, unless such surrender, etc., was bona fide made twelve months (now three years, see Finance Act, 1910, s. 59) before the death of the deceased and bona fide posession and enjoyment was immediately assumed and retained thereunder to the entire exclusion of the deceased.

If, therefore, in the case we are supposing A should live for three years after the release, all will be well, but, if he should die within that time, estate duty will be payable as the estate will be deemed to pass on his death.

That being so, I think that generally trustees are advised to provide against the contingency of A's death within that period by retaining funds to meet the duty, although, as I have said, it is impossible to tell how much will be required, and so, if that has to be done, there should, obviously, be a wide margin.

But is it necessary for the trustees to retain anything? In other words, will the trustees be liable to account for the estate duty in such a case?

It seems somewhat strange that this question does not appear to have been decided. Perhaps that is because this particular method of breaking a settlement has not been very often adopted owing, doubtless, to this difficulty about the estate duty, or, where it has been adopted, the trustees have taken the prudent course of making ample provision.

The pertinent enactment is contained in s. 8 of the Finance Act, 1894, sub-s. (4), of which, so far as material, reads—

> "Where property passes on the death of the deceased and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession and also, to the extent of the property actually received or disposed of by him, every trustee guardian committee or other person in whom any interest in the property so passing or the management thereof is at any time vested . . . shall be accountable for the estate duty on the property . . ."

In this connexion the learned editors of "Dymond on Death Duties" observe: "The trustee is accountable if the property or management is *at any time* vested in him. Where, therefore, a life tenant releases his interest for the benefit of the remainderman, and the property is taken out of settlement the trustees should make provision for the estate duty contingently payable on the life tenant's death within three years.

With great respect to the learned editors of that useful work I am unable to agree. I think that they have made two mistakes. First, they have construed s. 8 (4) of the Act of 1894 in the light of or with reference to s. 11 of the Act of 1900, and, secondly, they have read "is at any time vested" as meaning "has been at any time vested."

Leaving out words which are redundant for the present purpose, s. 8 (4) of the Act of 1894 reads:—

> "Where property passes on the death of the deceased . . . every trustee . . . in whom any interest in the property so passing . . . is at any time vested . . . shall be accountable . . ."

I read that as meaning that every trustee in whom the property is vested at the death of the deceased, or at any time afterwards before the duty has been discharged, shall be liable to account. I cannot conceive of a construction which would render liable trustees in whom, at any time before the death of the deceased, the property had been vested. If that were so, trustees who had been discharged before any release by the tenant for life had been made would be liable, and the estates of former trustees would never be free from the danger of attack by the Inland Revenue.

There are only two authorities touching upon the point so far as I know.

In *Re Bowes* [1907] W.N. 198, a fund was ordered to be paid out of court without any provision being made for future instalments of legacy duty, but that was not a case on estate duty.

On the other hand, in *Taylor* v. *Poncia* (1901), W.R. 596, the court declined to pay a fund out of court without providing for future estate duty. That case was directly in point, so far as it goes, there having been a release of a life interest to the remainderman, and Cozens-Hardy, J., directed that a sufficient sum should be left in court to provide the "maximum amount that could be payable" for estate duty on the death of the tenant for life until the expiration of a year from the date of the release of the life interest. It must be said, however, that the order was based upon the practice of the court, so that the case is hardly an authority for the proposition that trustees who failed in like circumstances to make a provision for the duty would be liable to account for it.

I must leave the further consideration of this question to my next Diary.

Landlord and Tenant Notebook.

Ex-Assignees, Ex-Under-Tenants and Dilapidations.

The right of a tenant to recover from sub-tenants and assignees in respect of dilapidations may give rise to questions not only of interpretation of covenants and as to measure of damages, but also of evidence. The position when an assignee who has himself assigned is called upon to pay for breaches of the repairing covenant which took place when he held the term was described by Pollock, C.B., in *Smith* v. *Peat* (1853), 9 Exch. 161, in the following words: "In cases of this kind it never can be precisely ascertained how much of the damage has occurred during the holding of each assignee, or what was the precise state of the premises at the time of each assignment." The issue raised in that case was whether the defendant was obliged to pay more than nominal damages. The plaintiff was the grantee of a term of twenty-one years, the lease containing a stringent covenant to repair and covenants to paint, etc., the interior and exterior in every seventh and third year respectively. He had assigned to the defendant during the fourth year. The defendant, six years later, assigned to another party in trust for the plaintiff, who two months afterwards surrendered the term to his grantor, paying (as he alleged in the declaration) £100 by way of compensation and satisfaction. The evidence he called was that of a surveyor, who said that £40 would have to be expended to put the premises in the state required by the lease, and that of the second assignee, who proved that the premises were out of repair when he took over, but also said that some damage had been done since by a distress levied by the lessor. The defendant called no evidence, hoping, perhaps, that the jury would be directed that the plaintiff, having failed to show when the £40 depreciation had occurred, had not made out his case. The verdict awarded £35, and a rule *nisi* was then applied for, but the judges of the Court of Exchequer, commenting upon the fact that no complaint had been made when the defendant took over the lease, and on the fact that he had not been called to prove his case, refused the rule.

The position of an under-tenant when the head lease is forfeited (and no vesting order applied for) was laid down in *Davis* v. *Underwood* (1857), 22 J.P. 8. The plaintiff was the mesne tenant, who had held a seventy-one years' lease, granted to him and containing covenants to repair and to pay rent, plus a proviso for re-entry in the event of either being broken. He had sub-let for a term of twenty-one years, commencing in the third year of his lease, to the defendant, the underlease containing similar provisions to those of the head lease. During its currency, the superior landlord re-entered for non-payment of rent. It was agreed that £40 would be the amount necessary to put the premises in repair at the time of the forfeiture, but the defendant contended that as the plaintiff had no longer any interest in the premises, nominal damages would meet the case. The Court of Exchequer declined to apply this reasoning, Pollock, C.B., remarking that he thought that the superior landlord was probably the real plaintiff in the case. Nor, may I remark, would the circumstance be within the mischief struck at by the L.T.A., 1927, s. 18 (1), which applies only when demolition, or structural alterations which would make the repairs valueless, has or have taken place, or is or are intended.

When an assignee enters into an express covenant of indemnity, its wording should be carefully perused. The tenant in *Hawkins* v. *Sherman* (1828), 3 C. & P. 459, was the grantee of a forty-one years' lease created in 1785, and in May, 1823, he had assigned it to the defendant "as from the 22nd April subject to all covenants which from the 22nd April on the part of the tenants, etc., ought to be observed." These included a covenant to repair, and when, soon after the original tenant's death, the landlords enforced the covenant against his estate to the tune of £375 15s., the executors sued for indemnity. The defendant was held to be liable only for the period during which he had held, damages being agreed at £60. But in *Gooch* v. *Clutterbuck; Davis* (*Third Party*) [1899] 2 Q.B. 148, C.A., the third party had agreed to accept an assignment of the last ten years of a 100 years' lease on the very day when the assignors, who were the defendants and the executors of a previous assignee, had had a dilapidations notice served upon them; the third party was informed of this before completion; and the assignment contained a covenant to observe the covenants and to "keep indemnified" the vendors and the estate. The new assignee does not appear to have realised that he was taking upon himself the responsibility of paying for dilapidations occasioned in the past, but Channell, J., and the Court of Appeal, so interpreted the covenant.

Our County Court Letter.

THE RESPONSIBILITIES OF PRESS PHOTOGRAPHERS.

In *Taylor* v. *Birmingham Gazette Limited*, recently heard at Birmingham County Court, the claim was for £25 4s., being a month's wages in lieu of notice, the plaintiff's case being that (*a*) he had interviewed the mother of a prospective bride, who had asked if the wedding photographs would be in *The Birmingham Gazette*; (*b*) not being able to guarantee this, he had advised her to write to the chief reporter; (*c*) not wishing to take this trouble, the lady had asked him to take the photographs himself, and (in agreeing to do so) he had pointed out that this would be independently of the newspaper. The defence was that (1) having had a complaint of the non-publication of the photographs, the defendants had then discovered the fact of the above interview; (2) they had accordingly dismissed the plaintiff for misconduct, viz., failing to divulge information as to an impending wedding of public interest. The organising editor stated that he explained to the plaintiff (at the time of his engagement) that any spare time occupation must not affect the defendants' interests, and the bride's mother's evidence was that she had employed the plaintiff in order that the photographs might be published, otherwise she would have employed a local private photographer. His Honour Judge Dyer, K.C., held that the plaintiff, when interviewing the lady, had knowingly acted contrary to the interests of his employer. The dismissal was therefore justified, and judgment was given for the defendants, who did not ask for costs.

FOOTBALLERS AND WORKMEN'S COMPENSATION.

In *Blunt* v. *Lincoln City Football Club*, recently heard at Lincoln County Court, the applicant had signed professional forms in 1926, but had put his knee out of joint during a practice, and it subsequently gave way in a match—his medical evidence being that he would never be able to play football again. Under his agreement with the club, however, he was entitled to work elsewhere, and had in fact become a mechanical erector, although his knee also impaired his earning capacity in that employment. Compensation had been paid at 30s. a week from May, 1927, until April, 1931, but the applicant contended that his earning capacity was still impaired. The respondent's case was that the applicant was earning full wages in an industrial employment. His Honour Judge Langman observed that the Act (which was not limited to one kind of work) awarded compensation for any inability to earn wages as the result of an accident. Professional football was nowadays not sport, but ordinary work, and the pre-accident earnings averaged £2 12s. 6d. a week, while the applicant's industrial wages were £3. An award was therefore made of £1 1s. 3d. a week from April, 1931. For a prior reference under the above title, see our issue of the 15th August, 1931 (75 Sol. J., 551).

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Protection of Property from Flooding.

Q. 2398. A is the owner of eight small semi-detached houses abutting on common land belonging to B, the Lord of the Manor, and over which land certain commoners and certain freehold tenants have rights. During heavy rains and especially in the winter months the front gardens (which are only a few feet deep) and entrances to A's houses are sometimes flooded and the houses become very damp by reason of the fact that water percolates through from the common land on to A's property. A has applied to the representatives of the Lord of the Manor, the commoners and the freehold tenants for permission to dig a shallow trench along his property on the common land to intercept the water and drain it into an existing sewer. Although it has been and still is contended that such works would be in no way detrimental to the common land or rights appertaining to it B has refused to give permission. The representatives of the commoners and freehold tenants have expressed their approval subject to the consent of B. On the grounds that the existing conditions are injurious to the health of A's tenants the assistance of the local sanitary authority has been sought, which authority, after careful consideration, has informed A that in such a case it has no powers over those of the Lord of the Manor, and therefore cannot help in the matter. In the circumstances must A abide by B's attitude or can A seek the assistance of any other authority? What other steps (if any) can A take?

A. A has, as far as we are aware, no right to carry out works on the common land to obviate the effects of natural flooding from rains unless it can be done under the Land Drainage Act, 1930, s. 58 *et seq.*, and 5th Sched., to which the questioner is referred. These provisions, replacing those in the Land Drainage Act, 1861, were obviously not passed for the benefit of small cottage gardens, but technically apply to all land. Apart from this, if applicable, A's remedy is to make the necessary works on his own land. If these works include a drain the local authority may have power to connect it with the sewer, but in the absence of further particulars no definite advice can be given as to this. It is doubtful, however, if even the local authority can commit a trespass to connect the drain. See s. 18 of the Public Health Act, 1890, and *Grant* v. *Derwent* [1929] 1 Ch. 390.

Land Drainage Act, 1930—Annual Valuation.

Q. 2399. The Land Drainage Act, 1930, provides by s. 24 (4) that every rate made by a drainage board shall be a rate assessed on the basis of annual value as regards all hereditaments, and by s. 29 (1) that the expression "annual value" in relation to any land means the gross annual value of that land as determined for the purposes of income tax under Sched. A of the Income Tax Act, 1918, as amended by any subsequent enactment, and (2) that any apportionment o the gross annual value which may be necessary for the purpose of determining the annual value for the purposes of drainage rates shall be made by the drainage board, and where land is not assessed to income tax (Sched. A), then the drainage board shall determine that value. Where the whole of a farm is assessed to income tax (Sched. A) gross at one entire amount, but only part of the lands comprised therein are subject to drainage rate, will you please say whether, for the purpose of arriving at the annual value of the land subject to drainage rate, the drainage board should apportion the Sched. A assessment *pro rata* according to the total acreage included in such Sched. A assessment or as all the lands in a farm are not necessarily of the same annual value (e.g., some parts may be of far less value than other parts) should the board have the lands subject to drainage rate valued on their merits and apportion their annual value accordingly. It seems doubtful if this individual valuation is intended under the Act for the purpose of making the apportionment as from the latter part of s. 29 (2) it would appear that the board have only power to determine the annual value where the lands are not assessed for income tax purposes.

A. These provisions need a little consideration, but when the sections (24 and 29) are read through fully we think the effect is to give authority to the drainage board in such a case as this to make (in the language of s. 29 (2)) any apportionment of the gross value of any land which may be necessary for the purpose of determining its value *for the purpose of drainage rates*. The latter part of the sub-section, referring to lands not assessed to income tax, has no application here. If our view is correct it explains the meaning of the first part of sub-s. (2); otherwise that part of the sub-section has no meaning. It seems to be intended to meet the case referred to in the question; and reference to the full terms of s. 24—including its proviso—tends to confirm this.

Secret Trust—Creation.

Q. 2400. A, the testator, leaves property to B "upon trust for an object of which he will be aware when this will is read." In fact, A had told B, *after he had made his will*, that he wished him to hold the property in trust for C. A dies; is there in existence a valid secret trust in favour of C, or must B hold as trustee for the residuary legatee? In "Snell's Equity," at the top of p. 75, 20th ed., we find ". . . there will be a similar trust for the residuary legatee if the will expressly gives the property to the trustee upon trust, but fails to disclose the particular trust on which he is to hold it, and the trust has not been communicated to him before or at the time of the making of the will." Surely this last line should read ". . . before the date of the testator's death"?

A. We are of the opinion that there is no error in the passage quoted from "Snell," though we are disposed to believe that it is by no means certain that, in a case where there is a trust but no express disposal of the beneficial interest, even notification to the trustee of the terms of the trust on or before the execution of the will is sufficient to create a binding secret trust. It appears certain that in such a case when once the will is executed the beneficial interest can only be disposed of by a writing executed as a will. Secret trusts owe their validity to the principle of equity that the Statute of Frauds (or its modern equivalent) and the Wills Act must not be used as instruments of fraud. No question of fraud arises in a case where the donee expressly takes only a trust estate. We therefore express the opinion that in the case of the will of A there is no secret trust (in favour of C), and B must hold for the residuary legatee, if the residuary bequest is wide enough to catch the interest not disposed of, failing which he will hold for the person or persons entitled as in partial intestacy. We may add that a very interesting article on the subject of secret trusts, to which the writer has referred in the preparation of this reply, will be found in our contemporary, *Law Notes*, vol. XLVII, p. 116.

Reviews.

Chitty's Forms of Civil Proceedings in the King's Bench Division of the High Court of Justice and on appeal therefrom to the Court of Appeal and the House of Lords. Sixteenth Edition. By PHILIP CLARK, Head Clerk of the Action Department, Central Office of the Supreme Court. Assisted by P. J. BOWIE and H. HINTON. 1931. Medium 8vo. pp. liii and (with Index) 1182. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. £2 5s. net.

The sixteenth edition of Chitty's "King's Bench Forms," that invaluable assistant to the common law practitioner in both branches of the profession, recalls that the first edition was published by Thomas Chitty no less than ninety-eight years ago. Before he died in 1878, he had seen his work run into ten editions within forty-four years. From that date the lamented Sir Thomas Willes Chitty, Bart., K.C., Senior Master and King's Remembrancer from 1920 to 1926, was chief editor of the succeeding editions, including the fifteenth, which was published in 1923.

The edition before us appears in no way to fall short of the high standard of its predecessors. The fact that Mr. Philip Clark, the chief editor, who is head clerk of the Action Department at the Central Office, and who has been associated with this work since 1912, is assisted by Mr. Bowie and Mr. Hinton, both of the Central Office, should be guarantee sufficient for anyone that the work is accurately presented and covers all the ground indicated by its title page.

The value of a reference book of this kind depends very often upon the ease and rapidity with which the desired form or forms can be discovered. The editors have wisely preserved the old arrangement of the work and the latest edition, though it includes many new topics and is inevitably of greater size than the fifteenth, presents, in the main, the same appearance.

Amongst the new subject-matter, there are many interesting features. There is a new chapter with ample notes on proceedings, and the forms required, under the Shipowners' Negligence Remedies Act, 1905, and the appropriate Order of the Supreme Court, viz., O. LIIIc of 1925, is fully considered. The practitioner will find that the chapters relating to actions for the recovery of land are as useful and as full as ever, and that the necessary references to the Judicature and Law of Property Acts, 1925, are clear and sufficient.

There are references which are new and which cannot but be of value, to the forms necessary in certain events under the Therapeutic Substances Act, 1925, the Criminal Justice Act, 1925, and the Audit (Local Authorities) Act, 1927. Possibly more than all these, however, the new chapter on proceedings under the Landlord and Tenant Act, 1927, will be welcomed by barrister and solicitor alike.

The editors deal with proceedings under this important Act, both in the county court and in the High Court, and their notes cover claims of every kind under the Act, whether by the landlord or by the tenant. There are, as well, ample references to the appropriate High Court and County Court Rules and Orders.

The last chapter in the new edition deals with the Treaty of Peace Act, 1919, and the awards of the Mixed Arbitral Tribunals set up under it.

There is a note upon enemy debts and a form of summons for leave to enforce an award of a tribunal, together with adequate references to the relevant Rules and Orders. While it is hard to conceive that this chapter is of more than academic value to-day, in other respects it is, of course, an interesting reminder of more complicated times. Although Mr. Claud Mullins' "In Quest of Justice" tried to make us believe that our High Court procedure has much to learn from that laid down for the Mixed Arbitral Tribunals, we do not think that the editors of Chitty's "King's Bench Forms," when considering their next edition, will find the practice or procedure of our courts much affected by that of the tribunals which dealt with enemy debts under the Treaty of Versailles.

The text of the book has been revised, although a great deal of Sir T. Willes Chitty's work has been left unaltered. The editors have also been able to avail themselves of many of his practice notes which are of the greatest assistance. Of course, all references have been brought up to date. In the result we have a work which once more can be confidently recommended to the profession for constant use.

Roscoe's Admiralty Practice. Fifth Edition. By GEOFFREY HUTCHINSON, M.A., Barrister-at-Law. 1931. Royal 8vo. pp. lxvi and (with Index) 577. London: Stevens & Sons, Ltd. Sweet & Maxwell, Ltd. 42s. net.

Roscoe's Admiralty Practice is one of the standard works of the profession, although, of course, restricted to one particular branch of it, and we welcome the new edition, noting with regret that this is the first edition which the learned author has not himself prepared. However, the present learned editor seems in every way to have produced an edition worthy of its predecessors.

There are one or two very minor criticisms which one might make. One would like to have seen in that part of the chapter on "Damage by Collision," which deals with damage, a reference to "The Edison" [1931] P. 230, which raises an interesting and somewhat important point as to damages (the case, we understand, is now waiting judgment in the Court of Appeal). Also in the preface, one might have expected to see some reference to the three International Conventions on Limitation of Shipowners' Liability, Maritime Mortgages and Liens and Immunity of State-owned Ships, which have been signed by this country and which, if adopted into our law (as they probably will be, when Parliament can turn its attention from more urgent matters), will introduce most important changes.

The most important alteration in the law which has occurred since the last edition is probably that concerning the extension of Admiralty jurisdiction by the substitution of s. 5 of the Administration of Justice Act, 1920 (now s. 22 (1) (*a*) (xii) of the Judicature Act, 1925), for the more restricted s. 6 of the Admiralty Court Act, 1861. Chapter V of "Roscoe," which has been largely re-written, gives a most useful survey of the present jurisdiction.

Books Received.

Gale on Easements. Eleventh Edition, 1932. By F. GRAHAM GLOVER, Barrister-at-Law. Royal 8vo. pp. xl and (with Index) 611. London: Sweet & Maxwell, Ltd. £1 15s. net.

Traders' Accounts and Income Tax (including Back Duty). By B. DAVIES, A.S.A.A., and H. P. GREGORY, A.C.I.S. 1932. Demy 8vo. pp. xv and (with Index) 245. London: Sweet & Maxwell, Ltd. 15s. net.

A Digest of Law and Arbitration Cases, 1931. By a Barrister-at-Law. 1932. Demy 8vo. pp. (with Index) xxxvii and 376. London: The Estates Gazette, Ltd. 15s. net.

Motor Law Concordance. By A. C. CRANE, 1932. Crown 4to. pp. 79. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Ltd. 9s. 6d. net.

Tutorial Auditing. By P. HARLE, F.C.A.A. 1931. Royal 8vo. pp. (with Index) 348. London: Gee & Co. (Publishers), Ltd. 12s. net.

The Law of Collisions on Land. By ANDREW DEWAR GIBB, LL.B., of Gray's Inn, Barrister-at-Law. Third Edition. 1932. Demo 8vo. pp. xxxviii and (with Index) 407. London; Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 17s. 6d. net.

Jones' Solicitor's Clerk. Part I. Eleventh Edition. 1932. By T. S. DUFFILL. Crown 8vo. pp. x and (with Index) 442. London: Effingham Wilson. 5s. net.

Correspondence.

The French Judicial System.

Sir,—Will you allow me the publicity of your columns to call attention to some essential points on which the French differs from the English judicial system.

Often English solicitors are disappointed and irritated at the delay in the determination of cases which they entrust to their agents in France—delay really due to a procedure over which there is no control.

1. The first point to be borne in mind is that there is in France no Central High Court of Justice as in England, but only several local Courts of First Instance in every *département* (county) (in all 363), and an Appeal Court for a group of *départements* (in all twenty-seven). The Paris Appeal Court has jurisdiction only in cases within the *département* of the Seine and several neighbouring *départements*. It thus happens that an important case may come in first instance into a local court where the judges have little experience beyond the litigation of petty disputes involving small interests. Cases where larger English interests are involved are generally on the sea coast. If within the jurisdiction of the Courts of First Instance of places like Dunkirk, Boulogne, Dieppe, Havre, etc., where the judges are accustomed to dealing with matters of shipping, such cases are dealt with more speedily and satisfactorily than when they arise within the jurisdiction of the many smaller places where accidents can occur just as well as nearer the larger ones.

2. Another point is that Courts of First Instance are of two kinds. Commercial cases are dealt with by a "Tribunal of Commerce," the judges of which are local business men without any judge trained in the law. These judges are regarded as better able to deal with matters of trade than the judges of the "Civil Tribunal," but there are only "Tribunals of Commerce" in the larger towns. In the smaller ones commercial cases are tried in the ordinary "Civil Tribunal." Appeals go to the higher court of the group to which the local tribunal belongs, and which in many districts has only local experience.

3. A third point is that though there is further appeal to the "Court of Cassation" in Paris, which has jurisdiction over the whole of the French dominions, the "Court of Cassation" has only power to determine whether the decision given by the local Appeal Court was in accordance with the law. If it decides that the law has not been complied with, it sends the case for re-trial to another Court of Appeal.

4. The practice of the law in France is still divided up among a number of different branches of the legal profession. Thus, conveyancing is the monopoly of "notaires" who are of limited number for each district and whose "charges" are transmitted by sale to successors, subject to approval by the State authority. The procedure in the Civil Courts of First Instance is a monopoly of "Avoués" (solicitors) attached to it. That of the Appeal Court is the monopoly of "Avoués" attached to it. Service of writs, documents, protests and so on is the monopoly of a "huissier." Lastly, there are the "Avocats," who can argue cases in Courts of First Instance and Appeal, but who have no power to argue cases in the "Court of Cassation." The "Avocat" at the "Court of Cassation" is at the same time an "Avoué," and has again a monopoly. The "Commercial Tribunals" are more free, but a certain number of specialists are provided with special benches and are appointed by the court, and therefore called "Avocat Agréé." These also have a practical monopoly.

Lastly, there is a delay due to the fact that cases are adjourned not from day to day as in England, but from fortnight to fortnight, and the judges, as a rule, take another week after the trial to deliberate on their judgment which is given in written form.

In consequence of this complicated system the *dominus litis* is usually an "homme d'affaires," an unattached legal practitioner who employs the different monopolists and "avocats," and carries the case through the different stages of procedure. This accounts for the presence in Paris of a large number of foreign lawyers who conduct cases from start to finish.

In conclusion, it is well that English lawyers should bear in mind that they cannot judge two systems so widely different by any common criterion.

All this is pointed out without any spirit of adverse criticism, for in spite of the complications attending litigation in France, the working of the law does not give rise to more public discontent than it does in other countries.

THOMAS BARCLAY.

60, Rue St. Lazare, Paris.
21st January.

Obituary.

SIR GEORGE ROCHE.

Sir George Roche, a well-known Dublin solicitor, died recently in Dublin, at the age of eighty-one. The son of William Roche, who was Crown Solicitor for Limerick and an Ex-President of the Incorporated Law Society of Ireland, he was educated at Stoneyhurst and Downside, and was admitted a solicitor in 1874. He was an Ex-President of the Incorporated Law Society of Ireland and Chairman of the Solicitors' Benevolent Society in Ireland, and took an important part in the work of the Dublin hospitals.

MR. A. VARLEY.

Mr. Alfred Varley, first Town Clerk of Colne from 1895 until he retired in 1928, died on Friday, the 15th January, at the age of eighty-two. He was appointed Clerk to the old Colne and Marsden Local Board in 1881, and continued in that position when the Colne Local Board was formed in 1894. During the short period that Colne was an Urban District Council, Mr. Varley was Clerk, and on the incorporation of the borough in 1895 he was appointed the first Town Clerk. He was admitted a solicitor in 1904.

MR. L. L. WHITFIELD.

Mr. Lewis Lincoln Whitfield, solicitor, of Great Winchester-street, E.C., died at a nursing home at Earl's Court, on Friday, the 22nd January, at the age of sixty-five, after a short illness of influenza followed by pneumonia. Mr. Whitfield, who was educated at Westminster City School, was admitted a solicitor in 1902, after being awarded the Clifford's Inn and John Mackrell Prizes. In 1905 he went into partnership with Mr. Charles D. Woolley, and they practised as Woolley and Whitfield at 1, Great Winchester-street. Mr. Woolley retired in 1925, and Mr. Whitfield carried on the business with the assistance of his son, Mr. John Frank Whitfield, who is also a solicitor, and who will continue the business.

MR. W. BUCHANAN.

Mr. Walter Buchanan, solicitor and partner in the firm of Messrs. Farrer & Co., of Lincoln's Inn Fields, until ill-health compelled him to retire about three years ago, died on Monday the 18th January, at Bath, at the age of sixty-two. The third son of Thomas Broughton Buchanan, Archdeacon of Wilts, he went up to Queen's College, Oxford, and took his degree in law in 1892. Mr. Buchanan was admitted in 1898, and entered the firm of Messrs. Farrer & Co. in the same year.

MR. E. T. HARROP.

Mr. Edwin Thomas Harrop, retired solicitor, and up till about a year ago a partner in the firm of Messrs. Harrop

and Harrop, solicitors, of Rotherham, died recently at his home at Swinton, at the age of eighty-six. Mr. Harrop, who was admitted in 1878, represented Swinton for a number of years on the Rotherham Board of Guardians.

MR. F. H. HEALD.

Mr. Frederic Herbert Heald, solicitor, of Manor Park, died on Saturday, the 9th January, aged seventy-one years. Mr. Heald, who was admitted in 1883, practised in the West End of London until about seven years ago, when, for reasons of health, he gave up the practice and opened an office in East Ham. He was Honorary Solicitor to East Ham Memorial Hospital.

MR. D. LEWIS.

Mr. Daniel Lewis, retired solicitor, of Cardiff, died recently at his home in Tydfil-place, Cardiff. He was educated at Cowbridge Grammar School, and after being articled to the late Sir Morgan Morgan (Messrs. Morgan & Scott) was admitted a solicitor in 1895. He practised on his own in Cardiff for some time, and eventually became a partner in the firm of Messrs. Daniel Lewis & Evans, of Queen-street, Cardiff. He retired about four years ago owing to ill-health.

MR. G. WHITTINGTON.

Mr. George Whittington, solicitor, of Leeds, and one of the leading figures in West Yorkshire Freemasonry, died recently in a nursing home at the age of seventy. Admitted a solicitor in 1897, he entered into partnership with Mr. F. E. Clarke and practised as Messrs. Clarke & Whittington. This partnership was dissolved in 1910, and Mr. Whittington practised on his own account until 1925, when he was joined by Mr. R. K. Talbot, one of his former articled clerks. They were in business together as Messrs. Whittington & Talbot, of Leeds.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 4th February, 1635, Sir Thomas Richardson, Lord Chief Justice of England, died at his house in Chancery-lane. He was buried in Westminster Abbey, whither the curious may go to study his features in the fine bust which surmounts his monument. Note particularly his hat. Its small dimensions throw a side-light on that curious incident at Salisbury Assizes, when a condemned prisoner "ject un Brickbat a le dit Justice, que narrowly mist." Narrowly, indeed! For it knocked off that small hat. The Chief Justice was fortunately bending down when the missile was hurled, and later when he was congratulated on his escape he replied: "You see now, if I had been an upright judge I had been slain." The pun was characteristic, for it was his habit to make a joke of everything, so much so that he was called the "jeering judge." Although one of the earliest reputed judicial humorists, he was also a sound lawyer. Still, he did not reach the Bench by merit only, for his appointment to the Chief Justiceship of the Common Pleas in 1626 is said to have cost him £17,000 (an interesting measure this, of the value of judicial office in those days). In 1631, shortly after the brickbat incident, he was transferred to the King's Bench.

THE HAPPY LIFE.

The recital of the enviable earnings of musicians recently wrung from His Honour Judge Turner the plaintive cry, "Why wasn't I a drummer? It is better than being a High Court Judge." Vain wish! For though they be adjacent, what a wall of conventions stands between the Westminster County Court and the New Theatre. He must seek comfort in the philosophy of Lord Darling, who, in summing up a case in which a schoolboy was suing in respect of serious injuries due to negligence, once said: "It is not the spending of money that makes one happy. One might be quite as happy with little money in the Navy as one could be with a lot of money at the Bar. There may be nothing in the world now open to the boy, but to become a King's Counsel—or worse, a Judge." To-day he might have added "or a band leader at £250 a week." But how is it that, whatever profession they praise, judges have so little to say for the joys of the judicial office?

COLSULTING THE VICTIM.

Of all the remarks which have recently fallen from Mr. Justice McCardie, none are more necessary than his protest at the Ipswich Assizes against the excessive sympathy shown to the criminal while far too little is shown to his victim. It recalls the practical view taken by Mr. Justice Day when a person with humane motives interceded for a prisoner convicted of a crime of violence. Slowly and deliberately the judge said: "When your wife or child is the victim, it will be time for me to consider your appeal. Now it is my duty to avenge the weak and the innocent." After all, that is the true test of much pseudo-scientific sentimentality. But it should not be too readily assumed that an interested party cannot show moderation. Once at the Old Bailey, while Sir Forrest Fulton was Recorder, a fellow convicted of robbery with violence had the hardihood to beg the prosecutrix to intercede for him. The judge asked her what she thought would be a fair sentence. The lady suggested three months, and three months it was.

Notes of Cases.

House of Lords.

Fardon *v.* Harcourt-Rivington.

22nd January.

NEGLIGENCE—DOG LEFT IN PARKED CAR—INJURY TO PASSER-BY—REASONABLE PROBABILITY OF DANGER.

This was an appeal from the decision of the Court of Appeal allowing an appeal by the defendant from verdict and judgment in an action tried by Talbot, J., and a common jury.

The action was brought by O. G. Fardon against S. Harcourt-Rivington for damages for personal injuries resulting in the loss of the plaintiff's left eye. On the evening of 4th April, 1929, the plaintiff parked his motor car in Somerset-street, at the rear of Selfridge's Stores, and was walking past a saloon motor car when, as he alleged a large Airedale dog smashed the glass panel in the rear of the car causing a splinter of broken glass to enter the plaintiff's left eye, which had to be removed four days later. The plaintiff alleged that the defendant was guilty of negligence in parking the car, in leaving the dog unattended, and in failing to tie up the dog in a safe and proper manner. The jury found for the plaintiff and awarded him £2,000 damages, but the Court of Appeal held that he could not recover, and he now appealed to the House of Lords.

Lord DUNEDIN, in delivering judgment, said it was impossible not to sympathise with the plaintiff in having suffered from a terrible accident, but sympathy was of very little use. He (Lord Dunedin) gave him his sympathy not only to him as a man but also as a litigant, because the trial judge did not withdraw the case from the jury. Mention was made of the well-known case of *Ryland* v. *Fletcher*, L.R. 3 H.L.330, though no great stress was laid on it, and he had no doubt that that case had no bearing on the present facts. That case decided that a person who owned a dangerous thing kept it at his peril, and if it escaped he was responsible for the consequences. But a motor car with a dog in it was not a thing which was dangerous in itself. If a man might reasonably have anticipated that the thing might become dangerous he was liable for not taking precautions, but if there was a mere possibility which could not have been foreseen he was not

liable. Now the danger which they had to deal with here was the danger of a piece of glass being knocked by a dog out of a small window and hitting a passer-by. That was an accident which had never before happened, and in the circumstances of this particular case there was nothing amounting to negligence. The appeal would be dismissed.

Lords WARRINGTON, ATKIN, MACMILLAN and THANKERTON agreed.

COUNSEL: *Martin O'Connor, Hector Hughes* and *Miss Colwill; Eales*, K.C., and *Wilfrid Bennett*.

SOLICITORS: *Darracott Seymour & Co.; Watson, Sons and Room.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Wirral Estates, Ltd. *v.* Shaw.

Talbot and Macnaghten, JJ. 20th January.

LANDLORD AND TENANT—RENT RESTRICTION—CROWN'S PREROGATIVE—EXEMPTION—NEW TENANCY CREATED BY PURCHASER FROM CROWN—SUBJECT TO RENT ACTS.

Defendant's appeal from a judgment of Judge Moore, given at Woolwich County Court.

The respondents, Wirral Estates, Ltd., claimed as landlords possession of 38, Allenwood-road, Well Hall Estate, Eltham, which was let to the present appellant, Sidney Shaw, at a rent within the Rent Restrictions Acts. A notice to quit served on him by the respondents had expired. The facts leading up to the action were as follows: In 1915 the War Office requisitioned the Well Hall Estate under its emergency powers, and built huts there. On the 22nd September, 1919, the appellant became a tenant of the Crown on a weekly tenancy at 7s. 5d. a week. The tenancy was treated as being subject to the Rent Restrictions Acts. In October, 1928, the Crown sold all the huts to the respondents, who continued to treat the tenants as protected tenants. On the 1st June, 1929, the appellant's tenancy was determined by notice to quit, and a notice was served of increase of rent. The appellant entered immediately on a new tenancy from the respondents at the increased rent, they having at no time taken actual possession so as to decontrol the premises, if they were controlled. On the 2nd March, 1931, however, a Divisional Court of the King's Bench Division held in *Clark* v. *Downes*, 145 L.T. 20, that not only did the Rent Acts not bind the Crown, but that they did not bind the assignee of the reversion of a tenancy created by the Crown. The respondents, relying on that case, on the 30th April, 1931, served on the appellant a notice to quit expiring on the 11th May, 1931, and on the 22nd May, 1931, instituted proceedings in the county court claiming possession. The county court judge held that the respondents were entitled to possession. The tenant now appealed.

TALBOT, J., said that the landlord of the dwelling-house in question was for some years until 1928 the Crown, and it had been held that the Crown, under the familiar prerogative doctrine, was not, generally speaking, bound by the Rent Restrictions Acts. The question now was whether the respondents, to whom the Crown sold the land in 1928, were or were not subject to the Acts. He (his lordship) thought that when the new tenancy was granted in 1929 that house ceased to be subject to the prerogative exemption of the Crown, even assuming that it extended as far as that. That decided the case in favour of the tenant, and the appeal would be allowed.

MACNAGHTEN, J., agreed.

COUNSEL: *Doughty*, K.C., and *H. Salter Nichols*, for the appellant; *G. Russell Vick*, for the respondents.

SOLICITORS: *Schultess-Young, Warren & Bird; Woodroffes.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Societies.

Gray's Inn.

Thursday, the 21st of January, being the Grand Day of Hilary Term at Gray's Inn, the Treasurer (Vice-Chancellor Sir Courthope Wilson) and the Masters of the Bench entertained at dinner the following guests: The Right Hon. Mr. Justice Finlay, K.B.E., The Treasurer of the Hon. Society of Lincoln's Inn (The Right Hon. Lord Blanesburgh, G.B.E.), The Right Hon. Sir John Anderson, G.C.B., The Hon. Mr. Justice Eve, Sir Thomas Horder, Bart., K.C.V.O., M.D., The Very Rev. Dean Inge, K.C.V.O., D.D., Sir Clare Lees, O.B.E., Sir Herbert Cunliffe, K.C. (Attorney-General of the Duchy of Lancaster), Sir James Jeans, F.R.S., Colonel John Buchan, C.H., M.P., Mr. Geoffrey Dawson, Mr. H. S. E. Vanderpant.

The Benchers present in addition to the Treasurer were: The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., Mr. Edward Clayton, K.C., The Right Hon. Lord Atkin, Sir Montagu Sharpe, K.C., Sir Alexander Wood Renton, G.C.M.G., K.C., Sir William Clarke Hall, Mr. R. E. Dummett, The Right Hon. Lord Thankerton, The Right Hon. Lord Greenwood, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, Mr. A. Andrewes Uthwatt, Mr. Malcolm Hilbery, K.C., Mr. Noel Middleton, Mr. N. L. C. Macaskie, K.C., Sir Albion Richardson, C.B.E., K.C., with the Preacher (The Rev. Canon Feilding Ottley, M.A.) and the Under-Treasurer (Mr. D. W. Douthwaite).

The Grotius Society.

Sir Arnold Wilson will read a paper before this society on Thursday, 4th February, at 4.30 p.m., on "the Administration of Occupied Territory," of which matter he has had personal experience.

United Law Society.

A meeting of the above Society was held in the Middle Temple Common Room on Monday evening, 25th January, Mr. George Bull in the chair.

Mr. James MacMillan moved: "That this House warmly approves the present tendency of the Bench to comment *obiter* on controversial matters of public interest." Mr. B. K. Featherstone opposed, and there also spoke Messrs. R. S. Johnson, P. J. Edwards, J. G. Campbell, W. T. Wells, T. R. Owens and S. A. Redfern. The opener having replied, the motion was put to the House, and there voted for the motion seven and against six. The motion was, therefore, carried by one vote.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 26th January (Chairman, Mr. R. S. W. Pollard), the subject for debate was: "That the case of *In re Smith: Public Trustee* v. *Smith*, 48 T.L.R. 44, was wrongly decided."

Mr. C. F. S. Spurrell opened in the affirmative, Mr. C. W. S. Rees opened in the negative; Mr. C. D. Griffeths seconded in the affirmative and Mr. R. H. Kerrison seconded in the negative. The following members also spoke: Messrs. P. W. Iliff, W. M. Pleadwell, R. Langley Mitchell, B. T. Ford, H. Lightman, Miss H. M. Cross, D. H. McMullen, T. Kenyon, J. C. Christian Edwards and A. G. White. The opener having replied, and the Chairman having summed up, the motion was lost by six votes. There were twenty-four members and one visitor present.

Inner Temple.

Wednesday, 27th January, being the Grand Day of Hilary Term at Inner Temple, the Treasurer (Sir Lancelot Sanderson) and the Masters of the Bench entertained at dinner the following guests:—

The Lord High Chancellor of Great Britain, the Earl of Lonsdale, Viscount Dunedin, Lord Hawke, Lord Carson, Lord Blanesburgh, Mr. Oliver Stanley, Sir John Anderson, Field-Marshal Sir George Milne, the President of The Law Society, Lieutenant-Colonel Edmund Royds, Mr. Frederick W. Fane, Mr. Robert E. Dickinson, Mr. J. T. Sanderson, Captain Oswald Birley, the Rev. the Reader, and the Sub-Treasurer.

The following Benchers were present:—

Lord Darling, The Earl of Desart, Sir Francis Taylor, K.C., Mr. Justice Avory, Mr. Howard Wright, Lord Hanworth (Master of the Rolls), Mr. Justice Talbot, Sir Gerald Hohler, K.C., Sir Leslie Scott, K.C., Mr. R. H. Balloch, Mr. F. P. M. Schiller, K.C., Mr. Justice MacKinnon, Mr. Justice Wright, Mr. E. E. Charteris, K.C., Lord Macmillan (Hon.), Mr. E. W. Wingate-Saul, K.C., Mr. E. M. Konstam, K.C., Mr. C. M. Pitman, K.C., Sir Boyd Merriman, K.C. (Solicitor-General), Mr. H. St. J. D. Raikes, K.C., Mr. P. E. Sandlands, The Hon. Sir Reginald Coventry, K.C., Mr. J. E. Singleton, K.C., Mr. Rayner Goddard, K.C., Mr. M. J. L. Beebee, Sir Reginald Mitchell Banks, K.C., Mr. S. R. C. Bosanquet, K.C., Mr. W. O. Willis, K.C., Master Sir G. A. Bonner, Mr. R. A. Gordon, K.C., Mr. Charles Doughty, K.C., and Mr. C. N. Tindale Davis.

The Treasurer, Sir Lancelot Sanderson, was unable to be present to receive the guests owing to an attack of influenza.

University of London Law Society.

The officers of the above Society for the year 1932-33 are as follows:—

President: Richard C. FitzGerald, LL.B., F.R.S.A.

Secretary: A. Goodman, 19, Kidderpore-avenue, N.W.3.

All communications should be addressed to the secretary.

The Auctioneers' and Estate Agents' Institute.

A sessional evening meeting of the members of this Institute will be held at 29 Lincoln's-inn Fields, on Thursday, 4th February, at 8 p.m., when Mr. Percy W. Lovell, F.S.A., B.A., A.R.I.B.A., Secretary to the London Survey Committee, will deliver a paper, in the form of a lantern lecture, entitled "The Survey of London: Some Account of the Scope and Value of the Work."

Rules and Orders.

THE COUNTY COURT DISTRICTS (MISCELLANEOUS No. 1) ORDER, 1932, DATED JANUARY 14, 1932.

[S.R. & O. 1932, No. 7/L.2.]

I, John Lord Sankey, Lord High Chancellor of Great Britain, by virtue of section 4 of the County Courts Act, 1888,(*a*) as amended by section 9 of the County Courts Act, 1924,(*b*) and of all other powers enabling me in this behalf, do hereby order as follows:—

1. The areas set out in the first column of the Schedule to this Order shall be detached from, and cease to form part of, the County Court Districts set opposite to their names respectively, in the second column of the said Schedule, and shall be transferred to, and form part of, the County Court Districts set opposite to their names respectively in the third column thereof.

2. In this Order "Parish" shall mean a place for which immediately before the first day of April, 1927, a separate poor rate was or could be made or a separate overseer was or could be appointed.

Provided that, unless the contrary intention appears, the boundaries of every parish mentioned in this Order shall be those constituted and limited at the date of this Order.

3. This Order may be cited as the County Court Districts (Miscellaneous No. 1) Order, 1932, and shall come into operation on the 1st day of February, 1932, and the County Courts (Districts) Order in Council, 1899,(*c*) as amended, shall have effect as further amended by this Order.

Dated the 14th day of January, 1932.

Sankey, C.

(*a*) 51–2 V. c. 43. (*b*) 14–5 G. 5. c. 17.
(*c*) S.R & O. 1899, No. 178, printed as amended to 1903, S.R. & O. Rev. 1904, III, County Court, E., p. 1.

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SCHEDULE.

First Column. Areas.	Second Column. County Court Districts.	Third Column. County Court Districts.
	Middlesex.	*Middlesex.*
Part of the district of the County Court of Middlesex holden at Brentford (in this Schedule called the Brentford district) viz.:— So much of the Brentford district as is enclosed by a line commencing at the point where the part of the boundary of the Brentford district, co-terminous with the boundary of the district of the County Court of Middlesex held at Willesden, is cut by the middle of the permanent way of the Ealing and South Harrow branch line of the Metropolitan District Railway (hereinafter called the point of departure) and proceeding in a north-easterly direction follows the boundary of the Brentford district to the point where that boundary is cut by the middle of the permanent way of the main line of the Great Western Railway, and proceeds thence in a westerly direction along the middle of that permanent way to the place where the Acton and High Wycombe branch line leaves the said main line, thence along the middle of the permanent way of the said Acton and High Wycombe branch line to the point where that permanent way crosses under the middle of the permanent way of the Ealing and South Harrow branch line of the Metropolitan District Railway, and thence in a north-westerly direction along the middle of that permanent way to the point of departure.	Brentford ..	Willesden.
	Hertford.	
The Parish of Little Stanmore ..	Watford ..	Willesden.
	Northamptonshire.	*Warwickshire.*
The Parish of West Haddon ..	Daventry ..	Rugby.
The Parish of Winwick	Daventry ..	Rugby.
	Yorkshire (West Riding).	*Yorkshire (West Riding).*
The Parish of Wetherby ..	Tadcaster ..	Harrogate.
	Merionethshire.	*Denbighshire.*
The Parish of Llansantffraid Glyn Ceiriog.	Bala and Corwen	Wrexham. *Shropshire.*
The Parish of Llanarmon Dyffryn Ceiriog.	Bala and Corwen *Montgomeryshire.*	Oswestry.
The Parish of Llangadwaladr ..	Llanfyllin ..	Oswestry.

Legal Notes and News.

Honours and Appointments.

The King has been graciously pleased to approve of the appointment of Sir THOMAS WALKER HOBART INSKIP, C.B.E., K.C., M.P., Solicitor-General, to be Attorney-General in succession to the Right Hon. Sir William Allen Jowitt, K.C., resigned; and of Sir FRANK BOYD MERRIMAN, O.B.E., K.C., M.P., to be Solicitor-General.

The King has been pleased to approve recommendations of the Home Secretary that Mr. SAMUEL LOWRY PORTER, K.C., be appointed Recorder of Walsall, to succeed Mr. S. R. C. Bosanquet, K.C., who has been appointed an Official Referee to the Supreme Court; and that Mr. GERALD DODSON be appointed Recorder of Tenterden, to succeed the late Mr. J. F. Vesey FitzGerald.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. FRANK KINGSLEY GRIFFITH, M.P., be appointed Recorder of Richmond, Yorks, to succeed Mr. G. Russell Vick, who has been appointed Recorder of Halifax.

Mr. D. E. RICHARDS, Deputy Town Clerk of Finsbury, has been appointed Town Clerk in succession to Mr. Hugh Green, whose resignation on account of ill-health will take effect at the end of March. Mr. Richards is at present Acting Town Clerk.

Sir PHENE NEAL, late Lord Mayor of London, has been elected Chairman of the Visiting Magistrates at Brixton Prison in place of Sir Louis Newton, who has retired.

Wills and Bequests.

Mr. Edward Grenado Chester, solicitor, of Kennington Park-road, S.E., and of Newington Butts, S.E., left £7,265, with net personalty £3,725.

Mr. Charles Gibson, solicitor, of Lancaster, senior partner in the firm of Gibson & Sturton, left £19,107, with net personalty £16,825.

Mr. Clarence Cecil Lucas, solicitor, of York, a member of the firm of Lucas & Ware, left £4,568, with net personalty £1,542.

Mr. Charles Frederic Rainey, solicitor, of Market Rasen, Lincs, left £6,219, with net personalty £5,950.

Mr. Walter Harvey Lancelot Shadwell, of Hythe, formerly Probate Registrar for Cornwall, left £51,079, with net personalty £49,605.

Mr. Thomas Henry Willett, solicitor, of Tunbridge Wells, left £7,679, with net personalty £3,756.

A private member's resolution to the effect that Chief Justices of High Courts in India should always be lawyers and that Judges should not be members of the I.C.S. was passed by the Legislative Assembly last Wednesday.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE		EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE MAUGHAM. Witness. Part II.
M'nd'y Feb.	1	Mr. Hicks Beach	Mr. Ritchie	Mr. More	Mr.*Andrews
Tuesday ..	2	Andrews	Blaker	Ritchie	*More
Wednesday.	3	Jones	More	Andrews	*Ritchie
Thursday .	4	Ritchie	Hicks Beach	More	Andrews
Friday	5	Blaker	Andrews	Ritchie	*More
Saturday ..	6	More	Jones	Andrews	Ritchie

DATE		GROUP I. MR. JUSTICE BENNETT. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
M'nd'y Feb.	1	Mr. Ritchie	Mr.*Blaker	Mr.*Hicks Beach	Mr. Jones
Tuesday ..	2	*Andrews	*Jones	Blaker	Hicks Beach
Wednesday.	3	More	*Hicks Beach	*Jones	Blaker
Thursday .	4	*Ritchie	Blaker	Hicks Beach	Jones
Friday	5	Andrews	Jones	*Blaker	Hicks Beach
Saturday ..	6	More	Hicks Beach	Jones	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 4th February, 1932.

	Middle Price 27 Jan. 1932.	Flat Interest Yield.			Approximate Yield with redemption		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	85	4	14	2	—		
Consols 2½%	56	4	9	3	—		
War Loan 5% 1929-47	99¼	5	0	9	—		
War Loan 4½% 1925-45	95	4	14	9	5	0	2
Funding 4% Loan 1960-90	87½	4	11	6	4	12	4
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	94	4	5	1	4	6	10
Conversion 5% Loan 1944-64	102¼	4	17	9	4	17	3
Conversion 4½% Loan 1940-44	96¼	4	13	6	4	18	1
Conversion 3½% Loan 1961	76	4	12	2	—		
Local Loans 3% Stock 1912 or after	63	4	15	3	—		
Bank Stock	247½	4	17	0	—		
India 4½% 1950-55	80	5	12	6	—		
India 3½%	58	6	0	8	—		
India 3%	50	6	0	0	—		
Sudan 4½% 1939-73	91½	4	18	4	5	0	3
Sudan 4% 1974	82½	4	17	0	5	0	6
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	82	3	13	2	4	6	0
Colonial Securities.							
Canada 3% 1938	87	3	9	0	5	5	7
Cape of Good Hope 4% 1916-36	92½	4	6	5	5	15	5
Cape of Good Hope 3½% 1929-49	77½	4	10	4	5	10	3
Ceylon 5% 1960-70	95½	5	4	9	5	5	4
Commonwealth of Australia 5% 1945-75	83	6	0	6	6	2	6
Gold Coast 4½% 1956	91½	4	18	4	5	2	6
Jamaica 4½% 1941-71	89½	5	0	7	5	2	6
Natal 4% 1937	93	4	6	0	5	12	11
New South Wales 4½% 1935-45	72½	6	4	2	7	16	4
New South Wales 5% 1945-65	77½	6	9	0	6	14	1
New Zealand 4½% 1945	82½	5	9	1	6	11	1
New Zealand 5% 1946	93½	5	7	0	5	13	9
Nigeria 5% 1950-60	95½	5	4	9	5	6	0
Queensland 5% 1940-60	77½	6	9	0	6	16	5
South Africa 5% 1945-75	98	5	2	0	5	2	4
South Australia 5% 1945-75	78½	6	7	5	6	9	9
Tasmania 5% 1945-75	78½	6	7	5	6	9	9
Victoria 5% 1945-75	78½	6	7	5	6	9	9
West Australia 5% 1945-75	79½	6	5	10	6	8	2
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.							
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	61	4	18	4	—		
Birmingham 5% 1946-56	101	4	19	0	4	18	6
Cardiff 5% 1945-65	98½	5	1	6	5	1	10
Croydon 3% 1940-60	68½	4	7	7	5	3	8
Hastings 5% 1947-67	98½	5	1	6	5	1	10
Hull 3½% 1925-55	75	4	13	4	5	7	10
Liverpool 3½% Redeemable by agreement with holders or by purchase	72	4	17	3	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	52	4	16	2	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	62	4	16	9	—		
Metropolitan Water Board 3% "A" 1963-2003	63½	4	14	6	—		
Do. do. 3% "B" 1934-2003	64	4	13	9	—		
Middlesex C.C. 3½% 1927-47	84	4	3	4	4	19	9
Newcastle 3½% Irredeemable	72	4	17	2	—		
Nottingham 3% Irredeemable	63	4	15	3	—		
Stockton 5% 1946-66	98½	5	1	6	5	1	10
Wolverhampton 5% 1946-56	99½	5	0	6	5	0	9
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	74	5	8	1	—		
Gt. Western Railway 5% Rent Charge	89	5	12	4	—		
Gt. Western Rly. 5% Preference	72½	6	17	10	—		
L. & N.E. Rly. 4% Debenture	67½	5	18	6	—		
L. & N.E. Rly. 4% 1st Guaranteed	62½	6	8	0	—		
L. & N.E. Rly. 4% 1st Preference	47½	8	8	5	—		
L. Mid. & Scot. Rly. 4% Debenture	70½	5	13	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	62½	6	8	0	—		
L. Mid. & Scot. Rly. 4% Preference	46½	8	12	0	—		
Southern Railway 4% Debenture	71½	5	11	11	—		
Southern Railway 5% Guaranteed	85	5	17	8	—		
Southern Railway 5% Preference	65	7	13	10	—		

THE SOLICITORS' JOURNAL

NOTICE

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WILL the SOLICITORS who advertised about 20 years ago for the DESCENDANTS of JOHN and SARAH NISBETT, late of Weymouth-terrace, Hackney-road, who went out to Australia, please COMMUNICATE with John Nisbett, 30, Danchurst-gardens, Ilford, Essex.

LOST HEIR.—Re JOHN MILLIGAN LORIMER Estate. The undersigned desires to hear from any DESCENDANTS of JAMES LORIMER WOOD, who was a son of Elizabeth Wood and William G. Wood, of London, England. The said James Lorimer Wood, if alive, would be about sixty-two years of age, and in 1903 lived at No. 2, North Cottages, Compton-square, Canonbury-road, Highbury, London.—David Smith, Barrister-at-Law, Gladstone, Manitoba.

A. BERTRAM R. WALLIS, deceased.—Anyone having a DEED BOX or WILL belonging to the late ARTHUR BERTRAM RIDLEY WALLIS, of 2, Elm-court, Temple, E.C., and Binfield, 4, Brunstead-road, Westbourne, Bournemouth, is requested to COMMUNICATE with J. M. Moore and Armstrongs, Solicitors, 8, Winchester-street, South Shields.

CLAUD ST. JOHN, who in 1907 was a shipping agent's clerk, living in or near London, or anyone knowing his whereabouts or of his death, is requested to write to Chamberlayne, Keene & Co., 30, Norfolk-street, London, W.C.2.

JONES.—Any SOLICITOR or other person having a WILL in their possession of ANNIE MARY JONES, deceased, 15, Romeyn-road, Streatham, please COMMUNICATE with W. H. Clarke, 165, High-street, Berkhamsted.

WILL Solicitor inquiring of a Mr. WILLIAM MARS COMMUNICATE with this office.—Box 897, Solicitors' Journal, 29, Breams-buildings, E.C.4.

RE SAMUEL THOMAS CLARKE.—Will any Solicitor who took over the papers of the above, who retired from business in 1882, please COMMUNICATE with the undersigned. Mr. Clarke practised at 30, Bury-street, St. James', London, S.W.1.—Lees, Smith & Crabb, 8/10, Katharine-street, Croydon, Surrey.

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